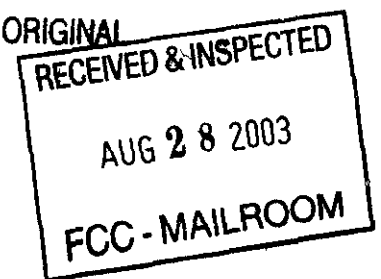




*Natural building blocks for quality of life*



August 15, 2003

Office of the Secretary  
Federal Communications Commission  
445 – 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

RE: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991  
47 CFR Parts 64 and 68  
[CG Docket No. 02-278, FCC 03-153]

To Whom It May Concern:

The National Stone, Sand and Gravel Association (NSSGA) provides these comments on the FCC Report and Order amending the regulations that implement the Federal Telephone Consumer Protection Act (TCPA). The regulations were published in the *Federal Register* (Vol 68, No 143, FR Doc 03-18766) on July 25, 2003, and are scheduled to take effect on August 25, 2003, (CG Docket No. 02-278, FCC 03-153)

The NSSGA, based in the Washington, D.C. area, is the world's largest construction material association by product volume, representing more than 750 member companies and approximately 120,000 working men and women in the aggregates industry. During 2001, a total of about 2.75 metric tons of crushed stone, sand, and gravel, valued at \$14.5 billion, were produced and sold in the United States. The total direct and indirect contribution of the industry to the nation's Gross Domestic Product (GDP) is \$37.6 billion and the industry supports 284,090 jobs in all sectors of the economy

In its Report and Order of July 25, the FCC made significant changes to the rules governing unsolicited faxes that will have a direct and substantial impact on associations, businesses, and other organizations that communicate and market by fax. By eliminating the "established business relationship" exception to the general ban on sending unsolicited advertisements by fax, the new rules will prohibit associations from sending most faxes to members and others without first obtaining signed, written consent

These new rules if implemented are economically burdensome and vague, intrusive and unnecessary, and are but another unfortunate example of excessive government meddling that will do little to advance commerce or industry in the United States. Although we believe the rules are well intended, they reflect a bureaucratic naïveté that is counterproductive and threatens legitimate commerce.

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In 1992, when the FCC first promulgated regulations under the Telephone Consumer Protection Act (TCPA), it determined that an “established business relationship” (EBR) generally provided the necessary prior express invitation or permission to send faxes that contain unsolicited advertisements. An EBR was defined as: “A prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber’s inquiry, application, purchase or transaction by the residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.”

The new FCC rules have substantially altered this framework requiring signed, written consent in order to send any fax that contains an “unsolicited advertisement” – even if sent to association members. The consent must include the specific fax number(s) to which faxes may be sent – and a separate consent will be required (or a consent that lists all applicable fax numbers ) If a company moves and obtains new fax number(s), a new consent is required. Thus, the FCC has not only eliminated the EBR exemption, it has eliminated the ability to obtain consent without a signed written document.

The paperwork requirement is unnecessarily burdensome and has the affect of radically altering accepted business practices without any discernable gain to either the business or association or the members or customers being contacted. Adding to the paperwork requirement and the inevitable loss of employee productivity that will result from these requirements are the potentially onerous financial penalties. It is disappointing even troubling that the FCC is willing to commit the time of federal workers paid by the taxpayers to enforce rules that are so poorly thought out and constructed, and have little if any discernable payback or added value to the taxpayers.

Further adding to this mountain of paperwork and the strain it will bring to businesses of all kinds is confusion over the scope of the rules. What types of faxes are covered? Of particular concern to NSSGA is whether faxes that contain solicitations to members for contributions to the association’s affiliated political action committee (PAC), membership dues renewal notices, or for voluntary contributions to the association’s related foundation would be exempt. These and other questions – and the dividing line between an advertisement and an informational fax – may or may not be clarified by the FCC in response to numerous private sector petitions for clarification.

What follows is a (non-exhaustive) list of some of the requirements employers and employees will have to monitor to be in compliance with the new FCC rules:

- Obtain express written consent not only for the association to fax to the recipient, but for all subsidiaries and affiliated entities.
- Obtain the consent in the name of the company or organization, not merely in the name of an individual.
- Obtain consent for *all* fax numbers in the company or organization.
- Changes in address or fax numbers means that new consent forms must be sent out.
- Consent must be sought for everyone in the association’s database even non-members

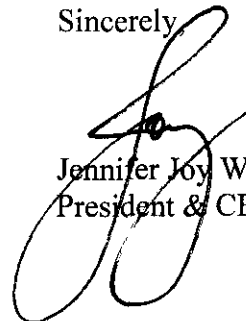
- Online consent requirements present yet another layer of intrusive regulation.
- The “rental” or “swapping” of membership lists – a common business practice -- opens up associations to potential liability.
- The publication of fax numbers in an association’s printed or online membership directory – standard operating procedure in business – is now called into question because of the implications of these new FCC rules.

NSSGA strongly urges the FCC to reconsider these new requirements. The new fax rules will significantly impact associations and their ability to communicate with members, prospective members, vendors, and others. The rules will also impact how association business partners communicate with associations, and how association members communicate with their current and prospective customers and clients. The required changes will be, for some, fundamental, and for many will present a significant financial burden and an overwhelming administrative challenge – while returning little of value to these organizations, but perhaps most importantly to the American taxpayers. Given these perilous economic times, this is not the time to be imposing new costly burdens and requirements on associations and businesses.

The NSSGA believes the FCC rules changes are a significant regulatory action requiring a better assessment of the impact of the proposed rules change on small business and other small organizations. Also, the FCC should clearly identify the consequences of the amendment under the Paperwork Reduction Act. Also, it does not appear time was allowed for review of the change by the Office of Information and Regulatory Affairs of OMB.

NSSGA urges a stay of the August 25 compliance deadline, and withdrawal of the amendment to the TCPA. Please contact us if you have any questions about the potential impact of these rules on the association or the aggregates industry.

Sincerely,



Jennifer Joy Wilson  
President & CEO